H.R. 4364 —— S. 2418 —— H.R. 4365

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 4364

TO DECLARE THAT THE UNITED STATES HOLDS IN TRUST FOR THE PASCUA YAQUI TRIBE OF ARIZONA CERTAIN LAND IN PIMA COUNTY, ARIZONA

S. 2418

TO AUTHORIZE THE TWENTYNINE PALMS BAND OF LUISENO MISSION INDIANS TO LEASE FOR NINETY-NINE YEARS CERTAIN LANDS HELD IN TRUST FOR SUCH BAND

H.R. 4365

TO PROVIDE THAT PER CAPITA PAYMENTS TO INDIANS MAY BE MADE BY TRIBAL GOVERNMENTS, AND FOR OTHER PURPOSES

SEPTEMBER 23, 1982

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE

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H.R. 4364 —— S. 2418 —— H.R. 4365

SEPTEMBER 23, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 4232, Dirksen Senate Office Building, Senator Dennis DeConcini (acting chairman) presiding.

Present: Senator DeConcini.

Staff present: Tim Woodcock, staff director; Peter Taylor, general counsel; Max Richtman, minority staff director; June Tracy, legislative assistant; and Marilyn Heller, staff attorney.

Senator DECONCINI. The Select Committee on Indian Affairs will come to order. This bill, H.R. 4364 proposes to transfer 570 acres of Bureau of Land Management land located in Pima County, Ariz., to the Pascua Yaqui Tribe of Indians. This land would, under the provisions of the bill, be held in trust by the U.S. Government for the tribe.

In the 95th Congress, I introduced the Senate bill that became Public Law 95–375 which provided Federal recognition for the tribe and established the tribe's present 202-acre reservation which is held in trust by the United States. During the consideration of the statute, it was projected that the 202 acres would accommodate about 600 tribal members. Today, however, there are 1,000 enrolled tribal members living on the 202 acres and thus the tribe is faced with a number of problems which concern the health and welfare of tribal members.

For example, the limited land base is causing the tribe to house two or more families in one dwelling. Furthermore, the tribe's efforts to develop self-sufficiency by initiating commercial, agricultural, and industrial projects is hindered by the lack of land.

The addition of the 570 acres, which consists of two separate parcels with each parcel sharing a common boundary with the present reservation will enable the tribe to respond to the tribal community's needs as well as expand its economic base. Because the Pascua Yaqui people have demonstrated a desire and a commendable ability to help themselves, I believe that this bill is necessary as it will enhance their efforts.

In addition to the Pascua Yaqui bill, we have two other bills before the committee for consideration today. S. 2418 is a bill to authorize the Twentynine Palms Band of Luiseno Mission Indians of California to lease certain lands for a period of 99 years, and H.R. 4365 is a bill to authorize Indian tribes to make per capita disbursements of revenues derived from sale or lease of trust assets to their own members.

At this point, without objection, I will place a copy of each of these bills in the hearing record.

[The bills follow:]

97TH CONGRESS
1ST SESSION

H. R. 4364

IN THE SENATE OF THE UNITED STATES

DECEMBER 15 (legislative day, NOVEMBER 30), 1981
Read twice and referred to the Select Committee on Indian Affairs

AN ACT

To declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to all valid existing rights, all right, title, and interest of the United States in the following described tracts of lands shall be held by the United States in trust for the Pascua Yaqui Tribe of Arizona and shall be a part of the reservation of such tribe:

(1) the east half of the northeast quarter of the southeast quarter, the southwest quarter of the northeast quarter of the southeast quarter, and the southeast quarter of the southeast quarter of section 22;

(2) the northeast quarter of the northeast quarter, the south half of the north half, the north half of the southeast quarter, and the southwest quarter of section 23; and

(3) the southeast quarter of the northeast quarter of the northwest quarter and the southeast quarter of the northwest quarter of section 24,

all in township 15 south, range 12 east, Gila and Salt River meridian.

SEC. 2. The State of Arizona shall exercise criminal and civil jurisdiction over such lands as if it had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79).

Passed the House of Representatives December 15, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.

II

97TH CONGRESS
2D SESSION

S. 2418

To authorize the Twentynine Palms Band of Luiseno Mission Indians to lease for ninety-nine years certain lands held in trust for such band.

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 13), 1982

Mr. CRANSTON (for himself and Mr. HAYAKAWA) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To authorize the Twentynine Palms Band of Luiseno Mission Indians to lease for ninety-nine years certain lands held in trust for such band.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended, is further amended—

(1) by striking out "and leases of land on the Agua Caliente" in the second sentence and inserting in lieu thereof "leases of land on the Agua Caliente", and

(2) by striking out "and the lands comprising the Moses Allotment Numbered 10, Chelan County, Wash-

ington," in the second sentence and inserting in lieu thereof the following: "leases of the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington, and leases of lands located in San Bernadino County and Riverside County, California, and held in trust for the Twentynine Palms Band of Luiseno Mission Indians,".

II

97TH CONGRESS
2D SESSION

H. R. 4365

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, JULY 12), 1982

Received; read twice and referred to the Committee on Indian Affairs

AN ACT

To provide that per capita payments to Indians may be made by tribal governments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary or the tribe directly to the members involved or, if such members are minors or have been legally determined not competent to handle their own affairs, to a parent or guardian of such

members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

SEC. 2. (a) Funds distributed under this Act shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended.

(b) Nothing in this Act shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended, or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided,* That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in section 1 of this Act if all other provisions of the 1973 Act are met.

(c) Nothing in this Act, except the provisions of subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

SEC. 3. (a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to section 1 of this Act and, where approval is given under such regulations, the United States shall not be liable

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with respect to any distribution of funds by a tribe under this Act.

(b) Nothing in this Act shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

SEC. 4. (a) The following provision of section 1 of the Act of June 10, 1896 (29 Stat. 3360), is repealed: "That any sums of money hereafter to be paid per capita to individual Indians shall be paid to said Indians by an officer of the Government designated by the Secretary of the Interior.".

(b) Section 19 of the Act of June 28, 1898 (30 Stat. 502), is repealed.

Passed the House of Representatives August 2, 1982.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

By W. RAYMOND COLLEY,

Deputy Clerk.

Senator DECONCINI. We will first take testimony from the Department of the Interior and the Pascua Yaqui Tribe on H.R. 4364, and then receive the testimony of the Department on the other two bills. Mr. Fritz, we would be pleased to receive your testimony on H.R. 4364 at this time.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS—OPERATIONS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY: RALPH REESER, CONGRESSIONAL AND LEGISLATIVE AFFAIRS DIRECTOR, BUREAU OF INDIAN AFFAIRS; AND KENNETH J. FREDERICKS, REAL ESTATE SERVICES, BUREAU OF INDIAN AFFAIRS

Mr. FRITZ. Good morning, Mr. Chairman.

Senator DECONCINI. Good morning.

Mr. FRITZ. My name is John Fritz. I am the Deputy Assistant Secretary for Indian Affairs, Operations, Department of the Interior. It is a pleasure to be here this morning.

On my left is Mr. Ralph Reeser, the head of the legislative arm of the Bureau of Indian Affairs, and to my right is the chief of our realty program, Mr. Ken Fredericks.

Let me give you a synopsis of our position with respect to H.R. 4364, a bill to declare that the United States hold in trust for the Pascua Yaqui Tribe of Arizona certain lands in Pima County, Ariz.

The Department of the Interior has no objection to the enactment of H.R. 4364, provided that the amendments suggested by the Department be adopted.

Essentially, our proposed amendments take into account the need to have the property transferred in a manner consistent with Executive Order No. 12348 concerning the disposition of Federal property, and existing rights of other individuals or parties who may have rights such as rights-of-way, easements, mining claims or other rights on or across the subject lands. We also recommend that the bill be amended to provide protection of any water rights or priorities which might exist at this time.

This concludes my synopsis and I would be happy to answer any question which you might have.

Thank you.

Senator DECONCINI. Mr. Fritz, thank you very much.

Without objection, your full statement will be made a part of the record at this point.

[The statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ON H.R. 4364, A BILL TO DECLARE THAT THE UNITED STATES HOLDS IN TRUST FOR THE PASCUA YAQUI TRIBE OF ARIZONA CERTAIN LAND IN PIMA COUNTY, ARIZONA

Mr. Chairman and Members of the Committee, I am pleased to have the opportunity to present the views of the Department of the Interior on H.R. 4364, a bill to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona.

We would have no objection to the enactment of this legislation, if it is amended as we suggest here and in our report to be sent to your Committee.

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H.R. 4364 would require the Secretary of the Interior to hold in trust for the Pascua Yaqui Tribe of Arizona 570 acres of Federal lands that are presently managed by the Bureau of Land Management. Under the provisions of the bill, those lands would become a part of the tribe's reservation and would be subject to the criminal and civil jurisdiction of the State of Arizona.

We fully support the purposes of this legislation: to make the tribe more economically self-sufficient and improve its general socio-economic status. However, the transfer of Federal property to any entity, whether other Federal agency, State, Indian tribe or private citizen, without payment of fair market value to the Treasury, is inconsistent with Executive Order 12348 concerning the disposal of Federal property. Therefore, in addition to technical amendments set forth in our report to be sent to your Committee, we recommend that funds equal to the amount of fair market value of the subject lands be appropriated to the Secretary of the Interior to carry out the purchase of the subject lands.

This will insure that the goals of H.R. 4364 can be achieved, without impairing other land management objectives. Payment for the land could be made through at least two possible mechanisms: direct appropriation in an amount equal to the market value of the subject land; or installment payments by the tribe over a reasonable period of time.

The ancestors of the Pascua Yaqui historically resided on lands in what is now the State of Senora in Mexico. During the reign of the Mexican Dictator Diaz, the Yaqui Tribe fled to the United States in the late 19th Century, to avoid persecution. Around 1904, the Yaqui settled near Tuscon, Arizona, in what became known as the Old Pascua Village, where they lived in a state of poverty and economic depression. However, they were able to maintain their tribal identity, language and culture.

Under the Act of October 8, 1964 (78 Stat. 1196), 202.76 acres of Federal land adjacent to Tuscon, Arizona, were transferred to the Pascua Yaqui Tribe. However, section 4 of that Act provided that the Yaqui would not be eligible for any Federal services or benefits commonly made available to Indians because of their status as Indians. Pursuant to that Act, the tribe organized under State Articles of Incorporation as the Pascua Yaqui Association. Most of the tribal members moved to the new location, which became known as the new Pascua Village.

The tribe was able to improve its economic condition at its new location only to a certain extent, because many of the housing and other social programs of the Federal Government were denied to the tribe and its members due to section 4 of the 1964 Act and the fact that their land was not held in trust by the Secretary. Finally, in 1978, the enactment of Public Law 95-375 (92 Stat. 712) provided Federal recognition to the Pascua Yaqui Tribe of Arizona. Recognition included eligibility for all Federal services and benefits provided to Indians because of their status as Indians.

If enacted, H.R. 4364 would provide an additional 570 acres to the Pascua Yaqui Reservation. These lands are located west and south of Tucson, Arizona, and consist of two non-contiguous parcels, one of 10 acres and one of 560 acres. The 10-acre parcel is bounded on the east and south by the existing reservation. The 560-acre parcel has a ¼-mile common boundary with the westernmost boundary of the existing reservation and a ¾-mile common boundary with the north boundary of the San Xavier Reservation. All of the 570 acres are public lands under the jurisdiction of the Bureau of Land Management.

According to preliminary estimates by BLM, land values in the area under consideration range from $1,200 to $2,000 per acre.

Enactment of H.R. 4364 would provide land for tribal programs designed to improve the economy of the tribe and its members through the development of housing, industry and agriculture. The tribal enrollment is approaching 5,000 members. This legislation would enable all tribal members to live on tribal lands, if they so desire.

We are also recommending that the bill be amended to protect valid existing rights of parties who, acting in good faith, have established rights-of-way, easements, mining claims, roads or other uses on or across the subject lands. Language should be included in the bill stipulating that such uses shall be allowed to continue, or providing that compensation shall be paid if uses are restricted or precluded as a result of enactment of the bill.

We also believe the bill should be amended to protect existing water rights and priorities.

Finally, we recommend that the land be transferred in fee instead of being held in trust status by the United States. This would allow the tribe to make greater use of the property as an integral part of its long range economic plan and will more likely enhance the prospects for non-Federal financing of economic development. Further, transferring the title in fee will avoid the jurisdictional problem described in the attached March 25, 1982, letter from our Phoenix Field Solicitor's Office to the Arizona Attorney General's Office.

We make this recommendation after careful consideration of the unique status of the Pascua Yaqui Tribe. I would remind you Mr. Chairman that each land transfer is considered on a case-by-case basis.

This concludes my prepared statement. I would be happy to answer any question you or members of the Committee may have.

Senator DECONCINI. If I understand it, there are two major amendments in addition to perhaps technical amendments. One is that the transfer not be made in trust, but in fee, to the tribe. Is that correct?

Mr. FRITZ. Yes, it is.

Senator DECONCINI. And then the second is that, of course, under Executive order, it would necessitate payment to the Government for the market value of the land.

Mr. FRITZ. Yes. And we——

Senator DECONCINI. And my question to you is, excuse me, you were going to say——

Mr. FRITZ. I was going to say there are two alternatives or suggestions.

Senator DECONCINI. Alternatives to that? What are those?

Mr. FRITZ. We are suggesting that payment for the land could be made through the appropriation process, or long-term payments by the tribe over a reasonable period of time.

Senator DECONCINI. What benefit is there to appropriate money when a transfer in trust, as I understand it, and correct me if I am wrong, would be made without any expenditure? What is the concern of having it in trust?

Mr. FRITZ. My understanding of your question, sir, is the following: Pursuant to the initiatives put forth by the current administration, the administration proposes to eliminate all discounted transfers to other Federal agencies, and all no-cost conveyances to States or other local governments.

By putting language in our comments relating to the appropriations for the acquisition of property, this will expose the acquisition, in effect, to the overall budget review scrutiny in the Appropriations Committees. It is just simply to air this type of an acquisition through the budgetary review process, sir.

Senator DECONCINI. Mr. Fritz, can you tell us, have there been other instances where payment has been required by the Federal Government for Federal land being transferred to Indian tribes?

Mr. FRITZ. I am going to have to look to my experts in this instance.

Mr. REESER. I am not aware of any cases where market value has been required. There have been some cases where land has been purchased from tribes in the last century and was sold back to them at the same price.

Senator DECONCINI. I am not certain of this, but knowing some of the problems that the Pascua Yaqui Tribes have had financially, I am quite certain that they will not have the available resources.

And then I am in the quandary of the justification of appropriating money. If the merits were there to make the transfer, the question of

appropriating the funds in the budget time when we have, the crisis we have today, I find it difficult to agree with the administration on it.

However, I take seriously your suggestions because of the professional expertise that the BIA has had. And I thank you for that. I just am a bit surprised that that would be the suggestion.

Can you tell me, is this the BIA's proposal? I realize it is being submitted on behalf of BIA, or is this OMB indicating that this is the way the BIA must support this legislation?

Mr. FRITZ. I think the fairest way to characterize this type of a proposal is to indicate that this is the administration's position and from that standpoint, the Bureau of Indian Affairs and the Department of the Interior, as well as OMB are all part of the administration.

Senator DECONCINI. I understand what you are saying. But, you did not answer my question. Did OMB come up with this proposal? Or did you?

Mr. FRITZ. This was a joint effort on the part of OMB and the Department.

Senator DECONCINI. Did OMB send to you a recommendation along this line?

Mr. FRITZ. I can not answer that. I was out of town last week.

Senator DECONCINI. Is there anybody in BIA who can answer that for us?

Mr. REESER. Sir, which specific part of our recommendations?

Senator DECONCINI. The part that it be transferred in fee rather than in trust, and that Executive Order No. 12348 regarding the appropriation for the cost being paid, the fair market value. Were either of those recommended by OMB?

Mr. REESER. The Bureau's recommendation on this bill was early last year and was in favor of trust, and at no cost.

Senator DECONCINI. That was last year?

Mr. REESER. Yes, sir. Prior to the Executive order.

Senator DECONCINI. Oh, before the Executive order.

Mr. REESER. Our House hearings were prior to the Executive order.

Senator DECONCINI. Oh, they were. I am glad to have that.

Then, since the Executive order, was that a determination solely by BIA or did the OMB make such a recommendation, or call to your attention the order, or anything?

Mr. REESER. The OMB advice had to do with the land being in fee rather than in trust. The payment for the cost of the land was an Interior Department decision based on the Executive order.

Senator DECONCINI. Does the Bureau have any problem with the description of the 570 acres as provided in the bill?

Mr. FRITZ. Mr. Chairman, I understand there is some dispute with respect to that, and I think I will let Mr. Fredericks speak to the technical description of the piece of property.

Mr. FREDERICKS. Mr. Chairman, we did have a problem with the description as in the original House bill, and also in the proposed Senate bill, and we have a legal description that we would like to submit for the record.

Senator DECONCINI. I would like to have that. Is that roughly 570 acres and still contiguous to the reservation?

Mr. FREDERICKS. Yes. There is one 10-acre tract that is not contiguous to the 560 acres, but it is contiguous to the original reservation.

Senator DECONCINI. Thank you. And on the issue of existing water rights, and priorities, could you amplify on whether the Bureau's concern is with protecting rights within the 570 acres, or the rights of the area adjacent to the 570 acres?

Mr. FRITZ. The comment with respect to the water rights issue is one whereby we are principally concerned with the need, if there is, excuse me, if there are such rights or priorities, we are concerned with the need to adequately compensate those people who might have any such rights or priorities. And we do not feel it would be appropriate for the tribe, for example, to have to compensate them.

Senator DECONCINI. You do not know. Has there been a survey of existing water rights?

Mr. FRITZ. To the knowledge of the three of us at this table, we do not know. We could supply that for the record, sir.

Senator DECONCINI. Would you mind checking that out, please?

I am advised that you are putting together a report or a presentation of some written document suggesting all of the amendments that we do not have yet. Is that correct?

Mr. FRITZ. Yes, sir.

Senator DECONCINI. And when will that be forthcoming?

Mr. FRITZ. The first part of next week, we hope.

Senator DECONCINI. Very good. The interest I have is that time is running out in this session, and assuming the chairman and the majority of the committee concur in this bill, I would like to have an opportunity to see it passed, if not before the October recess, then of course during the lame-duck session starting November 29. So we would appreciate your expediting that if you possibly can.

Mr. FRITZ. Yes, sir.

Senator DECONCINI. I have no further questions.

Does staff have any questions?

Thank you very much.

We will now hear from David Ramirez, chairman of the Pascua Yaqui Tribe and Anselmo Valencia, chief spiritual leader and past chairman of the Pascua Yaqui Tribe.

Mr. Ramirez, welcome. Mr. Valencia, welcome again, and thank you for the hospitality extended to my staff and myself recently while visiting your people and your beautiful tribal complex there.

We welcome your testimony today.

STATEMENT OF DAVID G. RAMIREZ, CHAIRMAN, PASCUA YAQUI TRIBE, TUCSON, ARIZ., AND ANSELMO VALENCIA, CHIEF SPIRITUAL LEADER, PASCUA YAQUI TRIBE, TUCSON, ARIZ.

Mr. RAMIREZ. You are welcome, Senator.

Mr. Valencia and myself, David Ramirez, are quite honored to be able to give testimony and answer questions about H.R. 4364, a bill to give land to the Pascua Yaqui Tribe. As you know, we submitted our testimony, and the committee and yourself have a copy of the testimony, and we are here just to answer any questions that you may have.

Senator DECONCINI. The entire testimony will appear in the record.

[The statement follows:]

PREPARED STATEMENT OF DAVID G. RAMIREZ, CHAIRMAN, PASCUA TRIBAL YAQUI COUNCIL

My name is David G. Ramirez. I live on the Pascua Yaqui Indian Reservation southwest of Tucson, Arizona. I am the chief executive of the Pascua Yaqui Tribe of Indians.

The purpose of this written statement is to urge early enactment of S. 1799, [H.R. 4364] to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain lands in Pima County, Arizona.

This bill will provide the Pascua Yaqui people with 570 acres of urgently needed lands lying adjacent to the southwestern boundary of our original 202-acre reservation. In September 1981, the tribe purchased 120 acres of privately held land bordering on the southern boundary of our reservation. Our reservation now totals 322 acres of land.

The Act of September 18, 1978 (Public Law 95-375; 92 Stat. 712) provided, among other things, for our 202-acre reservation to be held in trust by the United States; for the official enrollment of qualified members of our tribe; and for the adoption of a tribal constitution and bylaws. In July 1979, the United States accepted our original 202-acre reservation in trust for the tribe. In June of this year, we initiated an agreement to also place our newly-acquired 120 acres in trust status. We have officially enrolled nearly 5,400 members in our tribe. An additional 950 tribal members have applied for official enrollment and their names are on our waiting list. Our proposed tribal constitution has been awaiting approval by the Secretary of Interior since May 1981, having been in the hands of the Bureau of Indian Affairs since February 1979.

Using the most conservative figures, there are approximately 50 Indian reservations in the southwest. These 50 tribes have a tribal membership of aproximately 300,000 Indians. Their combined reservation land area totals some 30 million acres. This comes out roughly to about 100 acres for each enrollment tribal member. The total land area of the Pascua Yaqui Tribe is 322 acres. This comes out roughly to about 100 acres for each enrollment tribal member. The total land area of the Pascua Yaqui Tribe is 322 acres. This comes out roughly to about 1/20th of an acre for each of our enrolled members. Although we are rich in cultural heritage, we are land poor.

Our tribe has accomplished wonders with our limited land since the passage of the Act of September 18, 1978. But, within a very few years, all of our present reservation land will have been fully utilized, and we would still have made it possible for less than one-fourth of our enrolled members to join us there. S. 1799 would add 570 acres to our present reservation, increasing our land area to 892 acres. We have been told that no additional cost to the Federal Government will be incurred as a result of the enactment of S. 1799, nor would it result in any transfer of federal assets that would not otherwise take place. Let me now assure the members of this Committee that if S. 1799 is enacted into law and the subject 570 acres are added to our reservation, the Pascua Yaqui Indian Tribe does not intend to return to the Congress of the United States with a request for yet more land.

Our scattered enrolled members presently live for the most part on or near large corporate farms throughout central Arizona. They work the land for others and have no income security. They are also unable to participate fully in the religious and cultural life of our reservation. Yet they, like those of us lucky enough to live within our reservation, are eager to work hard to contribute to our tribal economy and to the national economy as well. The Pascua Yaqui Indians do not want to learn to be dependent on federal funding alone to survive. This is the pattern of too many other Indian tribes, and we do not admire this. But, we need help to remove the obstacle of an insufficient land base so more of us can work for our own social and economic advancement.

Specifically, the 570 acres of Bureau of Land Management land that S. 1799 would add to our reservation consists of two separate parcels, one of 10 acres, and one of 560 acres. If S. 1799 becomes law, these two parcels together with our existing reservation would be one contiguous piece of land.

The 10-acre parcel is bounded on the east and the south by the existing reservation. The 560-acre parcel has a quarter mile common boundary with our reservation to the west. It also has a three-quarter mile common boundary with the northern boundary of the San Xavier Papago Indian Reservation. This is shown in the proposed land acquisition map attached to this statement. Also included as further exhibits is a map showing our location relative to the City

of Tucson, and another map showing the general location of the Pascua Yaqui Reservation within the State of Arizona.

These 570 acres are the subject of your present consideration in S. 1799. A companion Bill, H.R. 4364, was approved by the U.S. House of Representatives in December 1981. If these 570 acres are not made part of our reservation now, they are certain to be put to other uses. removing them forever from the possibilities they offer the Pascua Yaqui people to advance themselves.

If added to our existing 322-acre reservation these 570 acres will be used for additional housing; commercial, agricultural and industrial development; and for civic and community services.

As to our housing situation: Within the present reservation our members constructed 87 housing units projected to accommodate approximately 384 members of the tribe. Over 614 enrolled members moved into this limited housing. We are housing two and sometimes three families in one dwelling, creating some very difficult physical and social problems.

To help relieve this gross overcrowding, the Indian Health Service constructed a new sewer system to replace our inadequate septic tanks. The new sewer system also made it possible for us to complete 60 additional houses in February 1982. These accommodated some 250 tribal members. Half of this number had shared houses on the reservation with other families. About 125 of this number had been scattered and have now joined us on the reservation. These new housing units included 12 apartments for elderly members of our tribe, thus also helping to alleviate the severe overcrowding. We are in the process of building 60 self-help houses and 35 rental units. We also have a home improvement program which adds two new houses per year to our reservation and helps to renovate and repair existing reservation homes, 57 of which are still substandard. By the end of fiscal year 1983, we plan to have accommodated a total of some 1,590 of our enrolled members on our present reservation. If we get the 570 acres you are considering today, we will be able to accommodate our remaining 3,800 scattered enrolled members on our reservation.

As to our commercial, agricultural and industrial development: In the course of the last four years, the Pascua Yaqui Tribe has started a thriving tribal enterprise development program. On our present limited land space we have established two new commercial enterprises. One is a landscaping business and the other is a business to grow and sell desert plants both wholesale and retail. We are also operating the Pascua Yaqui Charcoal Enterprise, procuring mesquite charcoal from Mexico which we bag and ship to a restaurant chain in Canada. We have a small hydroponic greenhouse enterprise in its pilot stage, along with a small agri-business growing food on our limited land which we hope to make a profit-making venture when the 570 acres are added to our reservation. We have acquired seed monies, partly from private sources, to establish a blanket weaving enterprise and an adobe brick making enterprise. Both are in the planning stages today. The adobe brick manufacturing enterprise in particular requires a larger land area than we now possess, first to procure the materials from the land, and secondly to dry the manufactured adobe bricks prior to their sale. Yaqui Indians have been weaving blankets and making adobe bricks since time immemorial, but have never had the resources to do this on a commercial scale. The 570 acres will help give us these needed resources.

In time we hope that all these tribal enterprises, along with new ones, will add to our dollar base as a tribe. Very few Indian tribes indeed can match our starting six such tribal enterprises in four short years without massive additional federal funding for the purpose. If the 570 acres are added to our reservation, we are also planning a small shopping center for our people, and will encourage our members to venture into individual Indian businesses therein. We have proved to ourselves that we can participate in the economic progress of America. What we lack is land space.

On the matter of using some of the 570 acres for civic and community use, let me say this. Our tribal government has grown tremendously since the passage of Public Law 95-375, along with our capability to administer services to our people on the reservation. When the Act of September 18, 1978, became law, the tribe was determined to learn the skills needed to administer its provision of services to our people. Only one of our many tribal programs, the scholarship fund, is being administered by the BIA at the present time. Otherwise, we are doing it all ourselves.

We do not presently have indoor facilities where our young people can work off their energy productively during the winter months. We do not have adequate space where our community can hold its meetings. The offices of tribal officials

are presently housed in temporary quarters with unrelated functions. This hampers our effectiveness and the efficient delivery of the services we are determined to provide to our people. We need to build a permanent tribal headquarters and facilities for all the services we are now performing, without displacing existing tribal structures and functions. We would like to use some of the 570 acres to improve the delivery of services to our people.

Each time we are able to initiate a new tribal enterprise to expand our dollar base or erect a structure to help provide our people with better services, we find we have to displace a functioning entity because our land space is so limited. Each time a family moves into a newly-built house, the pressing demand for housing is such that we find other families moving in with them because they have nowhere else to go. We have the incentive to improve our own social and economic well-being. We are improving our technical capacity to do so, but we lack the necessary land. Along with housing, community services and the beginnings of an expanded tribal enterprise and business program which the 570 acres will provide, we will also use part of it to develop a meaningful agricultural business. Our present landscaping business needs 20 more acres right now to meet new contract commitments. A broader agricultural business needs land to become a reality. Yaquis are good at agricultural work and understand the desert we live in well enough to make it agriculturally profitable. Again, what we lack is the land to do this.

We have been able to bring better employment opportunities to tribal members living within our reservation. But we still have a long way to go to help our people use their skills and talents in working for their own living and the betterment of the tribe. The unemployment rate on Arizona's Indian reservations has run as high as 78.2 percent. On our own reservation it falls from 76 percent in bad periods to almost full employment of available manpower during the times of reservation construction. Our people are well-motivated and cooperative, often giving their time and labor without pay in the construction of many of our community facilities. They have helped to build our baseball field, our burial grounds and the structures we use for traditional religious and other cultural ceremonies. I do not hesitate to tell you that the same cooperative spirit can be relied upon in utilizing the 570 acres to their fullest capacity, thereby adding to our tribe's social and economic progress.

Today we have saturated our commercial, agricultural and industrial potential within our present reservation lands. We are finding that as we push aside one activity for another, we are rapidly running out of options. We cannot accommodate the many activities we are planning to help our people make a better living in a decent and healthful environment. This problem will compound itself unless our land base is increased by the passage of S. 1799.

To conclude this statement, I would like to repeat that the addition of this 570 acres of Bureau of Land Management land to our reservation will add no additional cost to the federal government. What it will do is enhance the well-demonstrated desire and ability of the Pascua Yaqui people to help themselves. We want to maintain our active role in the overall national effort to improve the social and economic status of all Americans by hard work at the local community level. You can help us to continue doing this by your favorable and early consideration of S. 1799.

Thank you for allowing me to appear before you and to submit this written presentation.

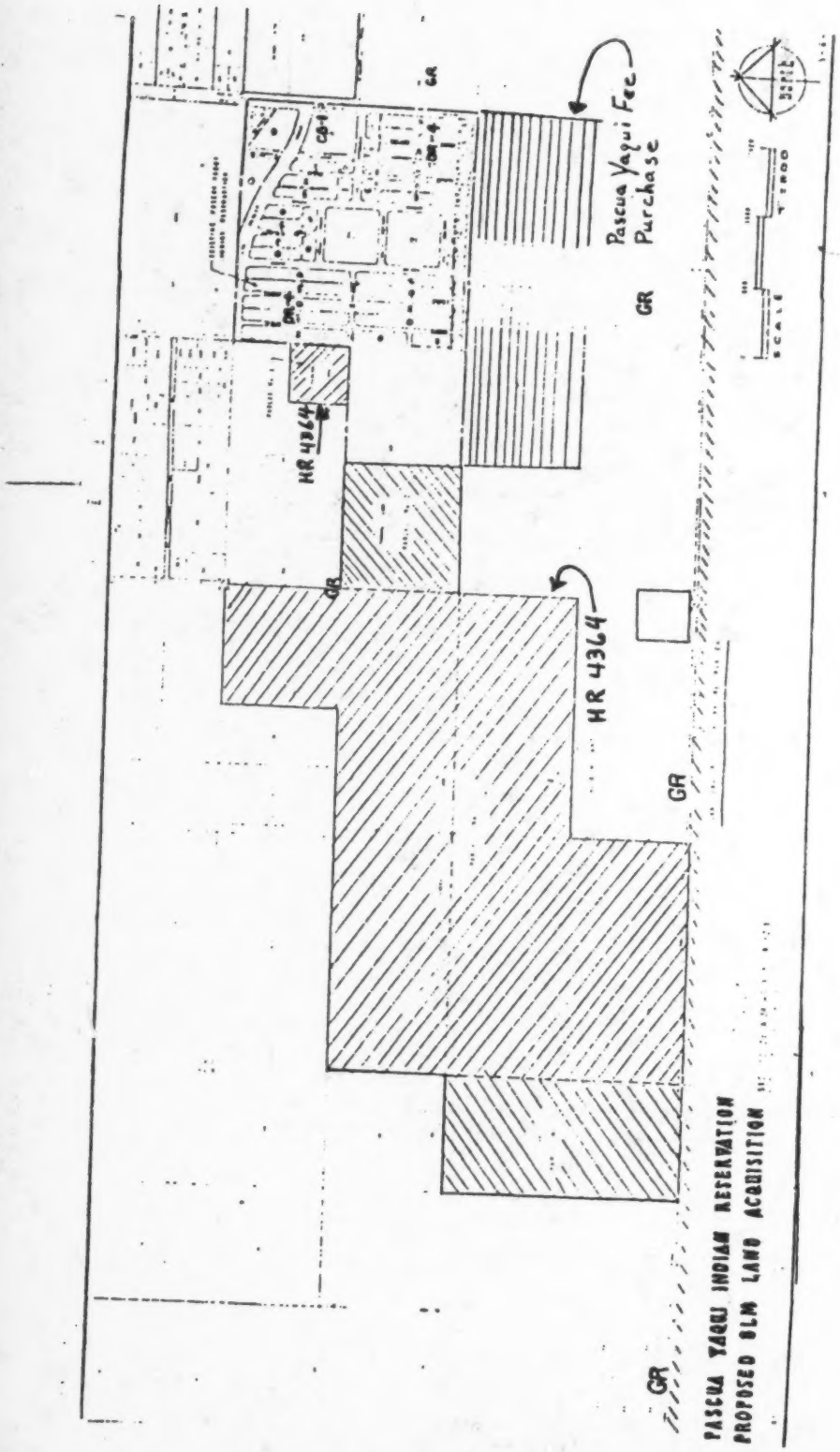

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EXHIBIT II

FOUR AND ONE HALF (4½) MILES WEST OF SAN XAVIER DEL BAC MISSION

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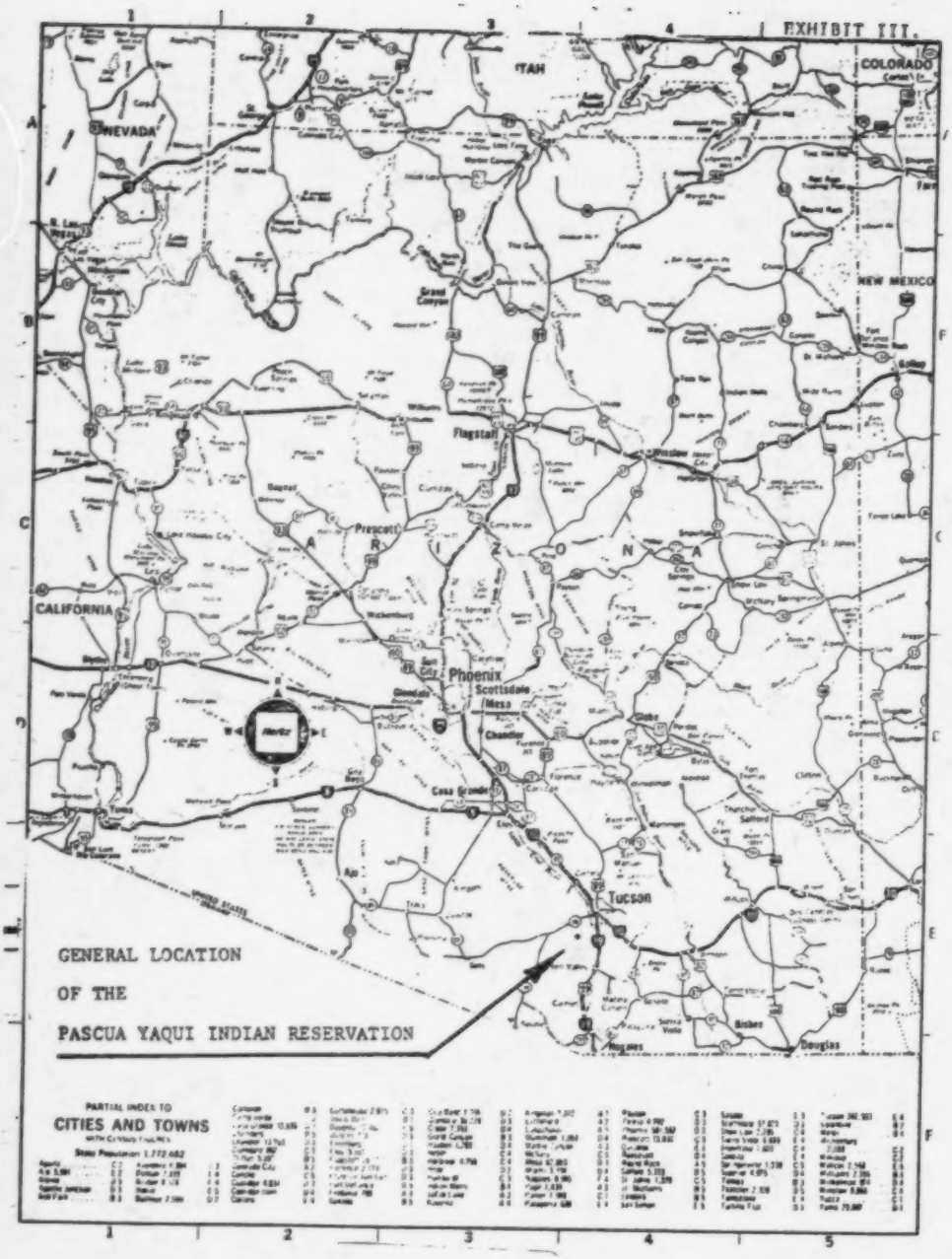
EXHIBIT III.



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JOINT JUVENILE JUSTICE

Arizona State Senate

Phoenix, Arizona

July 29, 1982

Senator William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C.

Dear Senator Cohen:

The purpose of this letter is to voice my support for S.B. 1799, a bill which would set aside 570 acres of land in trust for the Pascua-Yaqui tribe.

I feel that if the tribe is going to continue the work it has already started of settling as many members of the tribe as possible on the reservation, as well as the continued development on the reservation, that it will be necessary to them to have this land available for their use.

Thank you for your attention to this letter.

Sincerely,

Jaime P. Gutierrez

JAIME P. GUTIERREZ

JPG/pck

JOHN T. MAWHINNEY
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RULES
LEGISLATIVE COUNCIL
LEGISLATIVE ETHICS
COMMITTEE
JOINT LEGISLATIVE TAX
COMMITTEE

Arizona State Senate

Phoenix, Arizona

July 29,1982

Senator William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C.

Dear Senator Cohen:

The Pascua-Yaqui tribe is unique among this nation's Indian tribes, having been recognized by the United States Government only recently. The tribe, whose heritage and ancestory are rooted in ancient Mexico, migrated north to escape depredation and possible annihilation from the Mexican government.

In conjunction with this recognition by the United States Government, the tribe was ceded federal lands west of Tucson, Arizona,and since that time have made great gains in providing housing, health and employment opportunities to its members living on the reservation. Unfortunately, the reserved land is extremely small. In fact, the land is inadequate to house more than a small percentage of the tribe's members. Governor Ramirez advises me that there is a bill pending before your Committee which would grant to the tribe additional acreage from the federal lands adjoining their current holdings.

Based on the tribe's progress and its desire to serve its members, I would like to offer my support and recommendation that you treat this request favorably.

If I can be of any further assistance or provide more information to you,please feel free to contact me.

Sincerely,

JOHN T. MAWHINNEY
Chairman
Select Committee on Indian Affairs

JTM/pck

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JOINT COMMITTEE ON
RETIREMENT

Arizona State Senate

Phoenix, Arizona

July 29,1982

Senator William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C.

Dear Senator Cohen:

I am writing to urge your support for S.B. 1799 which is coming up for hearing before your Committee.

In order for the Pascua-Yaqui tribe to accomplish its goals of settling as many members of the tribe as possible on the reservation as well as economic growth for the tribe, it is necessary that the 570 acres in question be set aside to be put in trust for the tribe.

I hope you will give every consideration to this bill.

Sincerely,

Luis A. Gonzales

LUIS A. GONZALES

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REAPPORTIONMENT AND
REDISTRICTING

Arizona State Senate

Phoenix, Arizona

July 29, 1982

Senator William S. Cohen, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C.

Dear Senator Cohen:

It is my understanding that S.B. 1799 is up for consideration before your Committee. The purpose of this bill is to set aside 570 acres of federal land in trust for the Pascua-Yaqui tribe.

I would urge that the Committee give every favorable consideration to this bill as it will be in the tribe's best interest to have this additional land in trust for its future growth and development.

Sincerely,

Jim Kolbe

JIM KULBE

JK/pck

PASCUA YAQUI TRIBE

4821 WEST CALLE VICAM — TUCSON, ARIZONA 85706 — PHONES (602) 883-2838 & 883-2839

Resolution No. C-48-81

RESOLUTION
OF THE
PASCUA YAQUI TRIBAL COUNCIL

Endorsing H.R. 4364 and its Provision for Said Lands to be Transferred in Trust Status, and Respectfully Requesting the U.S. Department of Interior to Refrain from Suggesting Amendments to the Bill to the Contrary.

WHEREAS:

1. The Pascua Yaqui people are deeply grateful for the support we continue to receive from the Chairman and members of the House Interior and Insular Affairs Committee, along with all other members of the U.S. Congress, and from the U.S. Department of Interior; and

2. The Pascua Yaqui people have demonstrated our capacity to work hard in improving our own wellbeing through the dramatic economic, social and political advancements we have made since our tribal reservation lands were placed in trust status nearly three years ago; and

3. To maintain the momentum of this progress and to give many more of our scattered members an opportunity to join in our traditional Yaqui sacred cultural activities on our reservation, it is essential that the proposed 570 acres of reservation land be conveyed as the wording of the present Bill provides:

> "To declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona."

NOW THEREFORE BE IT RESOLVED THAT:

1. The Pascua Yaqui Tribal Council hereby respectfully requests the U.S. Department of Interior to continue lending its support for the enactment into law of H.R. 4364 with its present wording that provides for state civil and criminal jurisdiction, and to refrain from advancing any amendment to said Bill that the land be conveyed in fee.

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2. The Tribal Council makes the attached statement in justification for the enactment of H.R. 4364, retaining its present trust status provision without amending it as recommended by the spokesman for the U.S. Department of Interior.

3. The Chairman of the Tribal Council is hereby authorized and directed to do any and all things necessary or desirable to effectuate and accomplish the purposes of this resoltuion and its attached statement.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Pascua Yaqui Tribal Council at a duly called meeting at Pascua Pueblo, Tucson, Arizona, at which a quorum was present and that same was passed by a vote of 5 in favor and 0 opposed this 22 day of October 1981.

Chairman of the Council

CONCURRENCE:

Secretary of the Council

STATEMENT OF THE PASCUA YAQUI TRIBAL COUNCIL IN JUSTIFICATION FOR AN "IN TRUST" TRANSFER OF THE LANDS UNDER H.R. 4364

We are very grateful for the support of the Chairman and the members of the House Interior and Insular Affairs Committee, and the U.S. Department of Interior on a bill to declare that the United States holds in trust for the Pascua Yaqui Indians of Arizona certain land in Pima County, Arizona.

This additional 570 acres of reservation land will not only permit our tribal members presently scattered throughout Arizona to join our brothers and sisters on the reservation in preserving and practicing our sacred Yaqui culture, but will also serve to remove one of the last remaining obstacles that hamper our efforts to obtain greater economic self-sufficiency. Our people want to contribute to the economic progress of our beloved country and, through this added acreage, a united Pascua Yaqui people can devote their hard work and high motivation toward this end.

The U.S. Department of the Interior's representative who addressed the members of your committee on October 15, 1981, very correctly stated: "The Tribe was able to improve its economic condition at its new location *only to a certain extent* * * * *because their land was not held in trust by the Secretary.*" (Italic added.)

We are in full agreement with his conclusion. It reinforces the absolute need that the 570 acres to be added to our reservation under H.R. 4364 be transferred in trust and not in fee status as he then suggests. It was only when our reservation lands were placed in trust with the United States almost three years ago that our people were able to begin the present improvement in our economic, social, and political condition.

There are ample good reasons which we are ready to submit in detail to show that we will continue to prosper economically with all our reservation lands in trust status, and equally compelling reasons why our people could revert into an unending cycle of poverty if our lands were to be held in fee.

The Pascua Yaqui people have not yet attained the degree of sophistication needed to guard against profit-hungry non-Indian neighbors who already see the possibility to get our lands away from us in one way or another. This can take the form of forced sales for delinquent taxes, liens, loans, and a hundred other innovative financial transactions we are ill prepared to withstand.

We do not need to read about the landless Oklahoma Indians or about the Menominee experiment to know that we are not ready to match wits with persuasive land investors and speculators. Within very recent memory, we have seen Pascua Yaqui lands that were once held in trust by the County of Pima now, for the most part, in the hands of non-Indian individuals and corporations. This was a bitter lesson to our people and we have learned it well.

The experience of countless Indian reservations demonstrates that the trust status of these reservations does not diminish the prospects for non-federal financing of Indian tribal economic development. Many tribes have attracted outside capital and other investment to their trust status reservations. It is our intention to utilize a portion of the 570 acres for commercial, agricultural and industrial development. But, we must provide permanency to those who agree to invest their time, money and effort in our planned economic development program. If the threat of losing our reservation lands is constantly present, our economic development efforts already underway will be severely retarded.

We believe that if representatives of the U.S. Department of Interior had shared with us in advance their suggestion that these 570 acres be held in fee, we could have readily convinced them that such a transfer of the land is premature, dangerous and counter-productive at this time in our tribal life. We further believe that the Department of Interior is attaining their desired objective under the present wording of the Bill in that these 570 acres of trust reservation land will be subject to the civil and criminal jurisdiction of the State of Arizona. We have for three years now worked amicably under that provision with our original 202-acre trust status reservation and found it most acceptable.

It is our goal to participate fully in our country's free enterprise system and to contribute meaningfully to its continued economic superiority. In the last three years, we have made a good start. With the additional 570 acres of trust held reservation land our momentum will propel us closer to the economic starting line where we can stand as equals with our non-Indian brothers. Then and only then can we justify speaking of any other than trust status for Pascua Yaqui Reservation lands as originally proposed by the Congress in H.R. 4364 with which we are in full agreement.

Senator DECONCINI. If you have any summary or any comments you want to make on your testimony, I do have some questions I can ask you, but if you care to make any summary statement, please proceed.

Mr. RAMIREZ. We are here to answer questions that you have, Senator.

Senator DECONCINI. Mr. Valencia, do you have any opening comment?

Mr. VALENCIA. Yes, Senator. On the issue of fee transfer, taking into consideration that the tribe does not have the funds at the moment and would find it very, very difficult to have the adequate funds in the future to pay taxes on it——

Senator DECONCINI. To pay the real estate taxes on the land if it were transferred in fee?

Mr. VALENCIA [continuing]. Right. And if it were transferred in fee, then we would probably look toward BIA to appropriate funds, and that would——

Senator DECONCINI. To pay the taxes.

Mr. VALENCIA [continuing]. And that would jeopardize things. However, if it were under trust, then that technicality would be set aside, of course.

Senator DECONCINI. Let me ask you this so the record is clear, Mr. Ramirez, and Mr. Valencia: I understand that what you are saying is that the tribe could not put together the fair market value, whatever that may be, to pay for the land itself, if it were going to be transferred in fee. Is that correct?

Mr. RAMIREZ. That is correct, sir.

Senator DECONCINI. If it were transferred in fee, either by payment from you, which you indicate you could not put together, or by appropriation, you then would believe that it would be impossible for the tribe to sustain the cost of that land from the standpoint of paying the real estate taxes; is that correct?

Mr. RAMIREZ. That is correct.

Senator DECONCINI. Now, with the dedication of you gentlemen, and with you, Mr. Ramirez, as the leader of the tribe, and their desire for self-determination, is there some advantage from that standpoint to have the land in fee ownership, rather than in trust? Does that really make any difference?

Mr. RAMIREZ. No, it does not, Senator.

Senator DECONCINI. Is the other land the tribe is now occupying in trust?

Mr. RAMIREZ. Yes, the 202 acres, Senator. The present reservation is under trust.

Senator DECONCINI. What is the tribe's present arrangement on who has the civil and criminal jurisdictions over the present reservation land?

Mr. RAMIREZ. At the present time, the State of Arizona, through the Pima County sheriff, in Tucson, has criminal and civil jurisdiction over the Pascua Yaqui Reservation.

Senator DECONCINI. How is this working out for your people?

Mr. RAMIREZ. It is working out pretty well for us.

Senator DECONCINI. Is that based on just a mutual understanding, or do you contract for that, or do they just supply that?

Mr. RAMIREZ. It is a mutual understanding. We call them. They come, and——

Senator DECONCINI. And there is no cost to you for that?

Mr. RAMIREZ. No.

Senator DECONCINI. Would the tribe be able to assume civil and criminal jurisdiction if the State refused to provide it?

Mr. RAMIREZ. Yes. In the future.

Senator DECONCINI. If you had to.

Mr. RAMIREZ. Right. We would.

Senator DECONCINI. If the Tribal State Compact Act were enacted, which voluntarily permitted local jurisdictions and tribes to enter into different types of agreements which would be totally voluntary, would you suspect that perhaps you would enter into such an agreement with the favorable conditions you have now with Pima County?

Mr. VALENCIA. I will try to answer that. The tribe would be able to take over the criminal and civil jurisdiction in the foreseeable future; not at the moment. The foreseeable future could be 10 or 15 years, because we are not prepared to do it now.

Senator DECONCINI. And, if you were not prepared and you had the ability to enter into such an agreement on a voluntary basis, I presume you would enter into such an agreement until you might want to exercise it yourself, is that correct?

Mr. VALENCIA. Yes. That would be.

Senator DECONCINI. Mr. Ramirez?

Mr. RAMIREZ. Yes. We would like to go with it.

Senator DECONCINI. Do you have anything to add, gentlemen?

Mr. RAMIREZ. No.

Senator DECONCINI. I want to thank you very much for taking the time. It is very important from the standpoint of this committee to have you travel from Arizona to submit your statement. And your representation of the Pascua Yaqui people is greatly appreciated, and I think will bear very heavily in the decision of this committee.

Mr. RAMIREZ. We want to thank you very much for visiting our reservation over the weekend.

Senator DECONCINI. Thank you.

Mr. RAMIREZ. Thank you, very much.

Senator DECONCINI. Thank you.

Mr. VALENCIA. Thank you, very much.

Senator DECONCINI. Mr. Fritz, would you return please, with your able assistants?

Mr. Fritz, let me just clarify one thing that I did not understand. My undertanding is that your testimony suggests that the amendment providing for the appropriation or the payment of market value should occur whether it is transferred in trust or whether in fee. Is that correct?

Mr. FRITZ. Yes, sir.

Senator DECONCINI. Now, if appropriations were made from the general fund, at the fair market value, whatever that would be determined, and we obviously know how we would do that, where does the money go; how is it distributed if this lump sum of dollars were authorized and appropriated?

Mr. FRITZ. I will answer that to the best of my knowledge. We will get it for the record on a final basis, but to the best of my knowledge, sir, since Arizona is a so-called reclamation State, under existing au-

thorities, as I have just a very vague knowledge of it, 4 percent of those dollars would go to the State treasury; 20 percent to the U.S. Treasury; and then the remainder would go into a reclamation fund. That is my understanding of the breakdown. I honestly cannot tell you how that fund is utilized. We can get that for the record, if you like.

Senator DECONCINI. Yes. If you could supply that with your report next week, the certainty of how you understand the funds would go.

I am advised that Mr. Carruthers, Assistant Secretary for Land and Water, made the recommendation to the Interior Department and BIA requiring payment for the land. Is that your understanding?

Mr. FRITZ. As I indicated, I was out of town.

Senator DECONCINI. We will submit a letter and ask him if that is correct. This really troubles me that we are taking money from one hand of the Federal Government and transferring with the exception of 4 percent, if you are correct, which would go to the State of Arizona. And, the Lord knows the State of Arizona needs the money, but I do not think it would want to rip-off the Government 4 percent even, and then transfer it from one pocket into another pocket. So we will work on that.

We are now going to consider S. 2418, and would you care to make any statement regarding that, Mr. Fritz?

Mr. FRITZ. Mr. Chairman, if I may, I would like to give a synopsis of the Department of the Interior's views on S. 2418.

S. 2418 would further amend the act of August 9, 1955, to authorize the Twentynine Palms Band of Mission Indians to lease for 99 years certain lands held in trust for them in Riverside and San Bernardino Counties in California.

We recommend the enactment of the bill as amended in the nature of a substitute bill, and this substitution would provide that the future leasing authority for the Band would also include any acquired lands in the future in counties outside the Riverside and San Bernardino County areas.

That is the basis for our technical amendment.

Senator DECONCINI. That is the change that the administration is recommending to S. 2418?

Mr. FRITZ. Yes, sir.

Senator DECONCINI. Is that the only change?

Mr. FRITZ. Yes, sir.

Senator DECONCINI. Your statement will appear in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ON S. 2418, A BILL TO AUTHORIZE THE TWENTY-NINE PALMS BAND OF LUISENO MISSION INDIANS TO LEASE FOR NINETY-NINE YEARS CERTAIN LANDS HELD IN TRUST FOR SUCH BAND

Mr. Chairman and Members of the Committee, I am pleased to present the views of the Department of the Interior on S. 2418, a bill To authorize the Twenty-nine Palms Band of Luiseno Mission Indians to lease for 99 years certain lands held in trust for such band.

We recommend enactment of our amendment to S. 2418 in the nature of a substitute bill as suggested in our report to your Committee.

The enactment of S. 2418 would further amend the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C. 415) to authorize the Twenty-nine Palms Band of Mission Indians to lease for 99 years certain lands held in trust for them in Riverside and San Bernardino Counties in California.

The Band consisting of 13 members is governed by an "Articles of Association" which was approved on May 24, 1972, by the Acting Deputy Commissioner. Their landholdings consist of two tracts of land totaling some 402 acres with a 240-acre tract in Riverside County and a 162-acre tract in San Bernardino County.

These lands held in trust for the Band are unoccupied by any of its members and are not utilized for any purpose. However, the enactment of this legislation would enable the Band to lease part of their landholdings which would provide revenue to develop their other lands.

The Band had originally considered seeking authority to sell approximately 70 acres of its land to the Valley Sanitary District of Indio, California. The existing Valley Sanitary District treatment facility which is located adjacent to the subject lands must expand to meet the demands for waste disposal of the city of Indio. However, the Band has reconsidered and rather than sell its land base, has decided it would prefer to lease their lands for an amount they would receive if they sold it and still retain a reversionary interest in the land.

The Band has existing authority to lease its lands for a 25-year period with an additional 25-year renewal. However, considering the investments involved here, this lease term would not be long enough for the type of sanitary facility contemplated. The enactment of S. 2418 would permit the Valley Sanitary District and the Band to conclude a lease if they choose or allow the Band to enter into a contractural agreement with the Sanitary District.

This concludes my prepared statement. I would be pleased to answer any questions you or the Committee may have.

AMENDMENT TO S. 2418 IN THE NATURE OF A SUBSTITUTE

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 1 of the Act of August 9, 1955 (69 Stat. 539) as amended (25 U.S.C. 415) is further amended by inserting ", and lands held in trust for the twenty-nine Palms Band of Mission Indians," immediately after "Chelan County, Washington" in the second sentence.

Senator DECONCINI. I have no further questions. Does staff have any questions?

OK. Then the next bill is H.R. 4365. Do you have a statement on that, Mr. Fritz?

Mr. FRITZ. Mr. Chairman, I would like to just give a synopsis of the bill, H.R. 4365, which is to provide that per capita payments to Indians may be made by tribal governments and for other purposes.

The Department of the Interior recommends that the bill be enacted if amended as we have suggested.

I have also been advised that the U.S. Department of Justice will shortly be forwarding a report to the committee recommending some clarifying amendments concerning the liability of the United States under the terms of the proposed bill.

Essentially the bill would repeal two provisions of the law which currently require that all per capita payments to individual Indians of tribal income be made by officers designated by the Secretary of Interior. The proposed bill would allow these payments to be made by either the Secretary or by the tribal governments to which the funds belong.

From our perspective, in light of the sophistication of a number of the tribes, the changing circumstances, the Indian Self-Determination and Education Assistance Act, and this administration's policy on self-determination, we believe that tribes which are capable should be permitted to make per capita distributions of funds belonging to the tribe.

In addition, the limitation of the Department's involvement in such distributions would greatly reduce the burden on the Bureau of Indian Affairs that per capita distributions have become.

So with that, we would recommend also that language be added to the bill which would prevent the circumvention of the interest of minors and incompetents. With these additions, we would support this bill.

Senator DECONCINI. Thank you, Mr. Fritz. The House report that accompanies the bill indicates that five or six tribes have made these per capita distributions in the past. Could you identify these tribes?

Mr. FRITZ. Well, the five that I know about that have done it on a reasonably consistent basis over the past several years have been the Warm Springs Tribe, the Yakima Tribe, the Colville Tribe, the Skull Valley and the Uintah and Ouray Tribes.

Senator DECONCINI. Thank you. Section 2(c) of this bill exempts the Shoshone and the Arapaho Tribes of Wind River from cost of the provisions, apparently because they have a special act already.

Could you provide the committee with the citation to that act and a brief statement of the difference between that act and the provisions of this bill?

Mr. FRITZ. The act is found at 25 U.S.C. 613. And the difference—I think I will let Mr. Reeser explain, if he has it off the top of his head. Otherwise we can get it.

Mr. REESER. Mr. Chairman, the Wind River Tribe asked to be excluded from the bill.

Senator DECONCINI. Excuse me?

Mr. REESER. The Wind River Tribe asked the House to exclude them from the bill. It was not our recommendation. The current act is in 25 U.S.C. 613, and it calls for the Secretary of the Interior to make per capita payments of 85 percent of the balance available in the tribe's trust funds.

Senator DECONCINI. Do you agree with that exclusion?

Mr. REESER. If that is the tribe's wish, yes.

Senator DECONCINI. You have no problem with it.

When can we expect to receive the further amendments from the Department of Justice, do you know?

Mr. FRITZ. No, I do not, sir. I would anticipate they would be forthcoming shortly, but I cannot answer with any certainty.

Senator DECONCINI. We will try to find out ourselves. We may ask you to make a request also.

Mr. FRITZ. Yes, sir.

Senator DECONCINI. When you find out, will you give us your synopsis of those amendments? We would like to have your analysis of the amendments that may be coming forward.

Mr. FRITZ. Thank you.

Senator DECONCINI. Then your statement will appear in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS—OPERATIONS, DEPARTMENT OF THE INTERIOR, ON H.R. 4365 IN THE SENATE, A BILL TO PROVIDE THAT PER CAPITA PAYMENTS TO INDIANS MAY BE MADE BY TRIBAL GOVERNMENTS, AND FOR OTHER PURPOSES

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on H.R. 4365, a bill to provide that per capita payments to Indians may be made by tribal governments, and for other purposes.

We recommend that the bill be enacted, if amended as we suggest. In addition to our comments, I have also been advised that the Department of Justice will shortly forward a report to the committee recommending some clarifying amendments concerning U.S. liability under the terms of this bill.

H.R. 4365 would repeal two provisions of law which currently require that per capita payments to the individual Indians of tribal income be made by officers designated by the Secretary of the Interior. H.R. 4365 would allow these payments to be made by either the Secretary or the tribal governments to which the funds involved belong.

In addition, H.R. 4365 would continue the exemption of per capita payments from liability for payment of any previously contracted obligation, now provided by the 1898 provision which would be repealed by the bill. Any funds distributed per capita would also be subject to section 7 of the Indian Judgment Funds Act of October 19, 1973, which contains tax-exemption and offset provisions. Further, the bill would specify that enactment of the bill would not affect the requirements for distribution of funds appropriated in satisfaction of judgments of the Indian Claims Commission or the court of claims. Distribution of those funds would continue to be controlled by the 1973 act, except that per capita payments made under a plan approved under the 1973 act may be made by an Indian tribe if all other provisions of the 1973 act are met. The bill would also exempt the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming, from its provisions; however, the tax-exemption and offset provisions of section 7 of the 1973 act would be applicable. These tribes are governed by a special per capita statute. Finally, H.R. 4365 would provide that the United States not be subject to any liability with respect to any distribution of funds by a tribe under the bill.

We believe that the requirements that per capita payments be distributed only by Federal officers are no longer necessary. They were enacted at a time when most tribes had no organizational means for accounting for the disbursement of funds to their members. This is no longer the case. Most tribes now prefer to handle such payments themselves and, until the Department's solicitor determined that such practices were in contravention of the 1898 provisions, most tribes were capably handling the distribution of per capita payments from tribal funds held by the Bureau of Indian Affairs that were transferred from the U.S. Treasury to tribal treasuries. Since the bulk of these payments are usually cashed in stores or deposited in banks off the reservation, this practice was advantageous to Indian tribes, in that the non-Indian community was aware that the per capita checks were distributions of tribal income and not gratuity payments from the Federal Government.

In light of the enactment of the Indian Self-Determination and Education Assistance Act and the administration's policy of Indian self-determination, we believe that tribes should be permitted to make per capita distributions of funds belonging to such tribes. H.R. 4365 would provide specific authority for per capita distributions to be made by either tribal governments or the Secretary. Distribution by the Secretary, in his role as trustee, would be made should instances arise in which a tribe is not able to handle the accounting for such a distribution. Limitation of departmental involvement in distributions would greatly reduce the burden on the Department that per capita distributions have become.

However, we note that section 3(b)(3) of the 1973 act specifically provides that interests of minors and incompetents be protected. We believe the language in section 2(b) of the bill could be interpreted as allowing circumvention of that provision. To avoid this we recommend that section 2(b) of the bill be amended to assure that the interests of minors and incompetents are protected.

Therefore, we suggest that line 16 on page 2 of the bill be amended to read as follows: "Met, including but not limited to, the protection of the interests of minors and incompetents in such funds."

If amended as we suggest, and after consideration of the Justice Department's views, which will be forthcoming shortly, we would recommend the enactment of H.R. 4365.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

Senator DECONCINI. Are there any other witnesses today who care to testify?

I want to thank you very much, Mr. Fritz, and gentlemen for being with us.

The hearing will stand in recess subject to the call of the chairman.

[Whereupon, at 10:32 a.m., the hearing stood in recess subject to the call of the chairman.]

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